

Conversely, claimant argues the Board should affirm the Order. In the alternative, claimant argues the Board does not have jurisdiction over the Judge's authorization of Dr. Ketchum and, therefore, the Board should not redecide that issue.

The issues on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
2. Did the Judge have the authority to appoint Dr. Ketchum to treat claimant at respondent and its insurance carrier's expense?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, this Board member concludes the preliminary hearing Order should be affirmed.

By granting claimant's request for workers compensation benefits, Judge Howard implicitly found that claimant sustained personal injury by accident that arose out of and in the course of her employment with respondent. That finding is affirmed.

Respondent employed claimant as a certified nurses aide (CNA). In February and March of 2005, respondent assigned claimant to work at the homes of two separate individuals. The first gentleman, Mr. Otto, weighed approximately 300 pounds and required claimant to perform range of motion exercises on his arms and legs. Claimant also assisted Mr. Otto getting into bed and going to the restroom.

Claimant believes she began experiencing symptoms in her right arm in either late November or December 2004. At that time she did not report the symptoms to respondent as she did not realize what was actually occurring. But, according to claimant, she advised her supervisor in February 2005 about the symptoms she was having in her arm, which she purportedly related to her work and the exercises she was performing on Mr. Otto.

On the other hand, notes from respondent that were introduced at the preliminary hearing indicate claimant reported arm symptoms to her supervisor sometime in March 2005 and that claimant asked to be taken off Mr. Otto's case as the work was aggravating her arm.

Respondent referred claimant to North Kansas City Hospital Occupational Medicine. Records from the hospital dated April 26, 2005, indicate claimant was complaining of right elbow pain as she had twisted her arm on March 1, 2005, while working with a client. Those same notes also mention that claimant had used her right arm forcefully to move

the legs of a large client repeatedly for several months from December 2004 to March 2005. At that visit, claimant was diagnosed with a right arm and forearm strain.

Claimant testified the hospital only treated her right arm as she did not have any left arm complaints at that time. As of May 25, 2005, claimant was released from medical treatment and the doctor noted claimant's right arm symptoms were resolving.

At her attorney's request, in September 2005, claimant saw Dr. Lynn Ketchum, who diagnosed right lateral humeral epicondylitis and the same malady to a lesser degree on the left. Dr. Ketchum recommends claimant wear a tennis elbow band on the right and have one or two injections to the right elbow.

The record establishes that it is more probably true than not that claimant developed symptoms in both upper extremities working for respondent as a CNA. The symptoms initially developed in the right upper extremity and later developed in the left, with the right being more symptomatic than the left. Accordingly, claimant is entitled to medical benefits under the Workers Compensation Act for these bilateral upper extremity injuries.

Because this is an appeal from a preliminary hearing order not every alleged error is subject to review. Claimant requested a preliminary hearing to obtain medical benefits as treatment was not being provided. Consequently, the Judge had the jurisdiction and authority to authorize a treating physician. Accordingly, the issue of whether Judge Howard erred by authorizing Dr. Ketchum to treat claimant is not subject to review under the preliminary hearing statute, K.S.A. 44-534a. In addition, the issue is not subject to review under K.S.A. 44-551(b)(2)(A), which permits review of preliminary orders that exceed an administrative law judge's authority.

WHEREFORE, the November 29, 2005, preliminary hearing Order is affirmed.

IT IS SO ORDERED.

Dated this ____ day of January, 2006.

BOARD MEMBER

c: Kathleen J. Cossairt, Attorney for Claimant
Robert J. Wonnell, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director